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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,554	03/22/2004	Stephen R. Spindler	023070-010111US	3419

20350 7590 04/19/2005

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EXAMINER

WAX, ROBERT A

ART UNIT PAPER NUMBER

1653

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/807,554	Applicant(s) SPINDLER, STEPHEN R.	
	Examiner Robert A. Wax	Art Unit 1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-42 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 27-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,406,853 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Oath/Declaration

2. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

a) The oath or declaration must identify the specification to which it is directed as required by 37 CFR §1.63 (a)(2). In the instant oath, the specification is improperly identified as "reissue" application 09/648,642 when, in fact, that application was not a reissue application.

b) Certificate of Correction changes must be entered in the reissue application without bracketing or underlining. This will incorporate the changes as part of the original patent and not as changes in the reissue. There was a Certificate of Correction issued on November 26, 2002 correcting the serial number of the parent application to read 09/471,224.

A new oath correcting these errors is required.

3. Claims 27-42 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Amendment Format

4. The preliminary amendment filed March 22, 2004 adds new claims that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. All matter added in a reissue application must be underlined.

Allowable Subject Matter

5. Claims 27-42 are allowable over the prior art of record as well as 35 USC 101 and 112. Lane et al. performed a study to evaluate 2-deoxy-D-glucose as a mimetic of

calorie restriction and, in the last sentence of the abstract and the last paragraph, suggest that it might be possible to design interventions to mimic the effects of calorie restriction. However, this study clearly used long-term caloric restriction (LT-CR) and makes no mention of short-term caloric restriction (ST-CR) as is now claimed. The suggestion for further research does not rise to the level of a teaching of the claimed invention.

The specification contains data that correlate LT-CR with ST-CR, provides the claimed biomarkers and clearly sets forth the method of practicing the claimed method of identifying an intervention. Thus, the claims are also patentable over 35 USC 112, first paragraph. The claims are also patentable over 35 USC 101 because the prior art clearly shows a utility for such mimetics, evidence is provided by Lane et al.

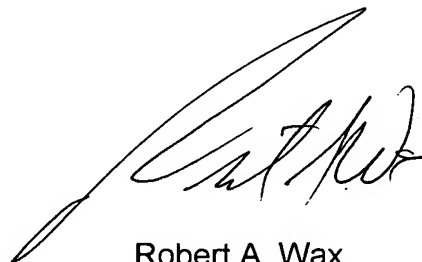
The reissue declaration states, "Some of the claims of the '853 patent encompass methods that are in the prior art. In particular, the claims that have no limitation as to the length of the calorie restricted diet or the time period required for changes in gene expression level (claims 1-8 and 14-19) encompass prior art of record such as WO 01/12851." Examiner agrees that the described claims were rejectable over the art cited. However, new claims 27-42 require that the reference animal be subjected to short-term caloric restriction. The prior art teaches only long-term caloric restriction and, thus, the new claims are patentable over the prior art.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Wax whose telephone number is (571) 272-0623. The examiner can normally be reached on Monday through Friday, between 9:00 AM and 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert A. Wax
Primary Examiner
Art Unit 1653

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